

RUMSON ZONING BOARD OF ADJUSTMENT

September 18, 2012

Minutes

Chairman Conklin called the regular meeting to order at 7:30 with the Pledge of Allegiance. The Roll was called with the following member present: Conklin, Atwell, Blum, Gummer, Thompson, Duddy. Also present: Fred Andre (Zoning Officer), Bernard Reilly (Board Attorney), State Shorthand.

Mr. Andre was sworn in at this time.

Chairman Conklin announced that the following applications will be carried to the October 16, 2012, meeting:

1. Randolph Rosen, 2 Broadmoor Drive – application to construct new two-story, single-family residence, in-ground pool, and patio;
2. Locals Creative Fresh Takeout, 12A Avenue of Two Rivers – application for major site plan for change in use of building to takeout restaurant.

Louis & Lisa Rettino, 7 Hance Rd.

Mr. Thompson and Ms. Gummer will not sit in on this continued application.

Mr. & Mrs. Rettino explained that they have provided a revised plan to provide 25' from the driveway entrance to the curb line. They also show the existing pillars and newly-proposed posts and gate that will open inward toward the house. The gates are 1 1/4" wide pickets that can be seen through into the yard.

Mr. Rettino referred to their hand sketches, which show the gates, pillars, etc., along with photos of the area that depict a car in the area of the curb where the gate would be. Mr. Rettino feels these show that their plan will provide adequate room for their purpose.

There were no questions or comments from the public.

Mr. Duddy thinks the relocation is a good plan.

Chairman Conklin asked if they would agree to a condition that the gates open toward the house, and Mr. & Mrs. Rettino said they would agree to this. Chairman Conklin

thinks this plan satisfies the safety issues for everyone involved.

Mr. Blum moved to approve the application with the condition that the gates open toward the home. Mr. Duddy seconded. Mr. Blum also suggested some wording changes in the conditions portion of the resolution that he felt should be somewhat less specific to allow for any manufacturing changes, and Mr. Reilly will change the wording to reflect this possibility.

Roll Call Vote: Ayes – Conklin, Atwell, Blum, Duddy

Nays – None

Motion carried.

Yellow Brook Properties, Co., LLC, 41 Bellevue Ave.

Mr. Reilly has prepared a resolution for this approved application. The trees mentioned to be replaced are included in the additional report from Mr. Brooks. Chairman Conklin would like to make sure that the trees cited for replacement get replaced.

Mrs. Atwell moved to adopt the resolution, and Mr. Blum seconded, with the suggestion that the changes noted in the location of the house (east to north and rear to east) be included.

Roll Call Vote: Ayes – Conklin, Atwell, Blum, Duddy

Nays – None

Motion carried.

Mr. Thompson and Ms. Gummer rejoined the

Dennis & Sarah Devine, 7 Evergreen Drive

Andrew Walsh, attorney, appeared on behalf of the applicants. He explained that they are requesting three variances on their application to remove an existing house and pool and construct a new, two-story, single-family residence - two of which are per-existing. They are proposing to face the new house toward Evergreen Dr., which they feel would maintain the character of the neighborhood.

Robert Adler, architect, was sworn in and explained the variances:

- Frontage and lot width (200' required / 194.81' existing) – He noted there is no property on either side available to change this;
- Lot circle requirement (100' required / 89' existing);
- Orientation of the house.

The difference between the length of the two sides is not that great and very close to square. Mr. Adler does not think it will feel that the house is being placed in a significantly different orientation. He distributed a plan to show the trees on the site that will be added (revised date 9/18/12). There are no differences within the house plan.

Mr. Adler explained that the homes along Evergreen Dr. are in the R-2 zone, requiring a 75' primary setback and a 55' secondary setback. The home across the street also faces Evergreen, and they feel their plan makes sense to also have their house face Evergreen. The remaining lots on Holly Tree are in the R-4 zone. He feels it makes sense to set this house slightly closer to Holly Tree. Also, the owners have spoken with the neighbor on Evergreen next to the driveway, who requested the house be moved farther away from their lot to prevent water runoff on to his property. They will agree to do this and make this adjustment to accommodate the neighbor. They propose to shift the home toward Holly Tree another 16', which is still greater than the R-4 zone requirement on Holly Tree. This would cause them to remove one more tree than what they are proposing. They are proposing to remove five trees – four within the 15' disturbance of the house, and the other under the maximum approved removal. Another Oak tree on site could be compromised, which is why they are proposing an additional five trees for the lot. He thinks they have done enough to compensate for the trees they propose to remove. A tree close to the neighbors lot could be dangerous, according to Mr. Brooks, and this will also be removed. Mr. Adler feels this general location is more consistent with the neighborhood and will have a more consistent impact.

Chairman Conklin asked about the house to the west, and Mr. Adler said he did not know what the setback was for this house. Chairman Conklin thinks the house will stick out after it is moved back, as explained. Also, he asked about the grading, since the house sits higher than the nearby homes. Mr. Adler pointed out a small knoll that would be removed, if they moved the house closer to Holly Tree, which would help level out the lot. Also, they are proposing a grading line around the house that will make this lot close to the grading of the nearby homes. Chairman Conklin suggested if they moved the house over less than 16', they could still possibly save this tree, which Mr. Brooks said would be compromised by the move.

Mr. Blum noted that the existing house is closer to the tree than their proposal, and he believes it is already impacted by the existing house. If the proposed house is not closer to the tree than the existing house, he does not think it would be affected.

Mr. Adler explained how moving the house would impact the grading and cause a possible water problem. Mr. Blum thinks this is a difficult trade off to lose the largest

tree to give more space to the neighbor.

John Tsakiris, builder, was sworn in. He explained the grading around the house and the tree, which has a 1 ½' difference in elevation, causing them to provide a swale. If the tree were gone, they could take out the elevation and take the grade down so it does not appear mounded as it does now. The tree is close to the house and has an established root structure. Building a new house within 20' of a tree creates a bad situation for the survivability of the tree. The tree is 25' from the house as it stands, which is not a lot. He would propose to replace this tree with four or five new Oak trees. Mr. Tsakiris explained the proposed plantings between these properties. Moving the house farther away will give them a better situation with the 2' change in grade. There is not much difference between 25' – 30' distance, according to Mr. Tsakiris, who said that the water would move a little faster at this distance.

Mr. Duddy asked if the driveway could be crowned, so that the bulk of the water could run to the east, instead of the north. Mr. Tsakiris said there is a drainage problem in this area, and they have tried to keep the water from running toward the Wilt's property. They have already decided to crown the driveway to one side. They have moved the driveway over, so that existing trees in this area would not be affected. They feel the proposed swale and the added distance would be more than adequate.

Mr. Adler said they are trying to work with the neighbor and do the right thing. They are willing to do what the Board thinks is appropriate.

Richard Jones, 37 Navesink Ave., was sworn in and thanked the Board for their concern regarding storm water runoff and the conservation of the trees. He does not object to the orientation of the house. He appreciates the communication with the neighbor. He hopes that the ordinance will be followed, and he reviewed some of the requirements currently in the ordinance. He thinks the tree protection is very important and many times gets over looked on a construction site. The proposed plan does have a diagram for protecting the trees, but he did not see a schedule of how the trees would be protected during construction.

George Tsakiris, a partner in Petcom, the builder, was sworn in and said he is the Operations Manager of the company. He makes sure the trees get protected, and he explained the sequence of events that occur after the permits are obtained, including the measures to be followed to effect the protection of the trees. The first step during construction is to protect the trees, and they are very sensitive to the trees on the lot. It is very important that they follow their procedures.

Larry & Wendy Wilt, neighboring property owners, were sworn in. Mr. Wilt expressed concern with the fact that their lot is very flat, and the proposed house will be creating a large water flow on to his property, which is probably the lowest lot in the neighborhood. He has experienced this problem with past construction in the area, and he does not want to deal with this again. He thinks moving the house over would give them more space to allow water to flow over the ground at a greater distance, affording them greater protection from this potential water problem. He does not think the Oak tree will survive due to the proposed finished grade, and he would prefer to see the house moved over.

Mrs. Wilt thinks the proposed 13' additional distance proposed would also look better, and she expressed her opinion that the proposed placement would appear jammed up against their house. Also, the house does not appear to be balanced and looks better from the Evergreen prospective. The 13' would make it look more balanced on the property and provide a better drainage plan. The house would be 70'6" from the property line to Evergreen if it were moved over, and 60' from Holly Tree Lane. Mr. Adler noted that the curb provides another 10', so there would be a perceived balance issue taken into consideration.

Mr. Thompson asked the Wilts if this change would solve their problem, and the Wilts said they do not understand why the driveway needs to be raised as shown, and they would like to see the final grading plan.

There were no other questions or comments from the public.

Mr. Blum asked if there was a report on the trees from Mr. Brooks, and Mr. Andre said there was not. The only significant specimen trees on the property are the Hickory tree, which will be saved. The one tree near the Wilt's property is hollow and hazardous, and the Oak tree would probably not survive if the house were moved away from the Wilt's property.

Mr. Devine, another nearby property owner, was sworn in and said he does not object to moving the house and replacing the trees. He wants to help solve the problems, and he believes shifting the house may help accomplish this.

Mr. Adler summarized the application, noting that they tried to place the house to be consistent with the other homes in the area. He thinks they have met the burden of not creating a negative condition and are creating a positive condition.

Mr. Duddy understands the concerns of the Mr. & Mrs. Wilt and for the driveway graded away from their house. His concern is how the house will look from Holly Tree Lane and how close it will be to the house next door. He does not want to have the house so close to Holly Tree Lane that it sticks out and sets a precedent for the street. He thinks they can arrive at a compromise to try and make everybody happy.

Mr. Blum does not think grading is an issue on this lot. All of the contours are within inches of the existing grades. The only place that changes is around the parking area at the garage – where there is an existing swale. The runoff should be substantially less, because it will not have more impervious surface than the existing house. The driveway must be pervious, under the current storm water management plan in the borough. He does not have too much concern with the runoff.

The Borough Tree Ordinance will need to be followed, and most of the trees to be removed are within the construction area. The large Oak tree is an issue, and the existing house is only 8' from the Oak tree. The new house will be many more feet away, and he thinks there is a minimum change of any impact with the new construction. He thinks there will be more damage by the demolition of the existing house. He thinks if the Oak tree is thought to be at the end of its life, according to Mr. Brooks, then he would not have a problem with not saving it.

Chairman Conklin asked about the driveway being closer to the Wilt's property, and Mr. Blum said this would not be a drainage concern, because recharge would need to be shown from a major portion of the impervious area, which would mean no runoff, except for flashing conditions. If the driveway is graded at a relative flat grade toward the street, this is where the overflow would go.

Mr. Adler said if the new house is moved over 13', it would be 15' to the tree.

Mr. Thompson thinks it is good that the neighbors are conversing about the plan. He agrees with Mr. Blum regarding the tree, and he would like to see it saved if possible, although the Devines have said they would be willing to replace the tree with at least two others, if it needs to be removed.

Ms. Gummer thinks it would be helpful to know the distance to the house behind this property. She understands the screening issue, but noted that it might not always be

there. Mr. Adler stated that if this property had 20' more length along Evergreen Dr., their plan would allow 55' off Holly Tree Lane, and the point is that this would be a permitted distance on the secondary front. The relationship of the house adjacent to this is not a negative impact, in his opinion. The relationship between 55' and 75' is acceptable on adjacent lots within the two zones, according to Mr. Adler.

Ms. Gummer also questioned the 13' proposal, and Mr Adler said it was based on aesthetics and their attempting to achieve a balance on the lot.

Mr. Blum noted that the existing house is 42' from Holly Tree Lane, and if they end up being 65', it would be an improvement over the existing lot.

Chairman Conklin thinks it is a balancing issue, and he understands the Wilt's suggestion to achieve better aesthetics and drainage. He thinks moving the house to the south by 8' would provide 20' off the tree, and testimony was heard that the drainage would not be made worse.

Mr. Blum would like to hear from Mr. Brooks regarding the tree to see if the tree is viable and if it is worth saving. He does not think it will be possible to demolish the house and not affect the tree.

Mr. Reilly suggested including a condition that Mr. Brooks review the status of the existing large Oak tree, and if he determines it is of sufficient value, the applicant will comply with protection measures. If it is determined that it is not worth saving or able to survive, the applicant will agree to replace the tree with two Oak specimens.

Mr. Blum suggested that since they need a revised plan, they could agree to something and also require a report from Mr. Brooks before they take a vote.

Ms. Gummer would also feel more comfortable hearing about the viability of the tree and knowing the location of the house next door.

Mrs. Atwell likes the proposed orientation. It is a large home and since it is a corner lot, the farther from Holly Tree Lane the better. She also questioned whether they need to move the house. She likes the original design and does not think there is a strong reason to move it.

Mr. Thompson again likes the fact that the neighbors have spoken with each other, and he thinks the neighbors have legitimate concerns. He thinks a compromise is in order.

He would like to save the tree, but they have agreed to replace it, if that is not possible.

Mr. Reilly can prepare a resolution for the next meeting, and the Board could ask Mr. Brooks to appear at that time. The applicant will provide a survey to show the location of the existing homes.

Mr. Reilly does not think he has heard exactly what the Board wants regarding the placement of the house. Chairman Conklin thinks the feeling of the Board is that it could be moved some distance away. He noted that the resolution would not have been approved until the next meeting anyway, so the applicant will come back to that meeting with the additional information. The general consensus is that the Board does not think the house should be moved. The public will have a chance to comment again at the next meeting.

Mr. Adler asked if the Board would accept a letter from Mr. Brooks, if he is not able to attend the next meeting.

The application will be carried to the October 16th meeting with no further notice required.

Stephen & Nancy Mahedy, 8 Avenue of Two Rivers

Kevin Kennedy, attorney, appeared on behalf of the applicants. They are seeking approval to demolish the existing home and construct a new, single-family home. The property is in a flood zone, and FEMA regulations state that the home must be constructed above the flood elevation; however, to achieve the zoning ordinance height requirement would not provide a functional or architecturally-pleasing design. They are seeking height relief or a change of the approved grade. They are not seeking to overpower or overbuild on the site, and their design will be consistent with other homes in the neighborhood.

Mr. & Mrs. Mahedy and James J. Monteforte, architect, were sworn in at this time. The Board accepted Mr. Monteforte's qualifications. Mr. & Mrs. Mahedy are the owners of the property and described the existing lot. They have a hardship in that they need to conform with the flood plain regulations and still build a home consistent with others on the street. Mr. Mahedy presented a photo that depicts the various homes on the street (A-1). They are in the R-1 Zone, and the lot is 1.6 acres in size. Surrounding properties are single-family homes also. Mr. Mahedy said he took the photos over the past few days. Their goal was to build a home consistent with the others on the street. Most are Tudor in style, with very steep roofs. They would like to build a similar home, but

conforming to the flood elevation requirements caused them to lose 6' in height, and they would not be able to achieve the Tudor design. They decided to design a seashore colonial style home instead, but with a roof pitch that was consistent with the other homes. He stated the other homes on the street are up to 48' in height. Their proposed home would be 43.92' at the peak elevation.

The demolition is proposed in phases. They would like to demolish 80% of the house and leave the existing carriage house and utilize some of the materials in the new house. It will ultimately all be demolished. They also propose a detached garage to be built at elevation 34' from elevation 10' and upward. Mr. Mahedy also pointed out a berm on the north border, containing all the runoff from this area of the property, and this also goes along the south side. The runoff is contained on the site and they feel the new grading plan will continue this situation. The new home will conform with all zoning ordinance requirements, except for the height. The proposed home will sit mostly on the site of the old home and driveway.

Mr. Monteforte pointed out the piece that will be saved until the end of construction via the site plan provided. The house is very well set back, and modestly sized at 4,500 sq. ft.

Chairman Conklin noted that the current garage is 18.5' high. The 43' proposed for the house is from the base elevation of 0.0. The existing structure will be 33.98' from the 10' elevation.

There were no questions or comments from the public.

Mr. Blum asked if the garage will be a one-story building, and Mr. Monteforte said they are proposing 24' from the finished grade of 10, which is different than what is shown on their plan. Mr. Blum said the grade is shown as 9' in the center of the building, and Mr. Monteforte said they would not be going more than 24' above this grade, which would not require a variance. They have no plans for the second floor of the garage, except for storage. The area would not be finished. There are no stairs proposed, and they will provide pull down stairs. They have no intention of having it as habitable space. No heat is proposed for the garage.

Mr. Blum noted a door in the side wall of the garage, and Mr. Monteforte said this is correct and provides an additional entrance that would probably have a step or slope to match the elevation in the garage.

The garage doors are at an angle, according to Mr. Blum, but it was noted that they are at least 200' from the street.

Mr. Thompson commented that Mr. Mahedy has done a great job. He likes the relativity of what is going on in the neighborhood and how it impacts their plan. He changed the style of the home to accommodate the hardship with the flood requirements.

Mr. Duddy noted that they have had several applications such as this, which were located in low areas and needed to be accommodated due to the flood plain requirements. He would be in favor of the application, and feels it is necessary to get the additional height.

Mr. Blum does not have a problem with the grade, which will require the engineer's review, and there should be a condition that if the engineer does not approve it and requires a change, they would need to come back for approval.

Mr. Duddy moved to approve the application from the revised grade. Revised plans will be submitted to include the garage to show the 10' grade at the house and 9' at the garage, before the next meeting. Mr. Thompson seconded.

Roll Call Vote: Ayes – Conklin, Atwell, Blum, Gummer, Thompson, Duddy

Nays – None

Motion carried.

Patrick & Sara McElduff, 96 Rumson Road

Paul Lawrence, architect, was sworn in, and the Board accepted his qualifications. He showed the Board two photos of the existing house (A-1). He was asked by the applicants to expand the house and make it more attractive from the road. They would like to bring the driveway more to show the front of the house and not the garage. The detached garage will be attached to the house by an 8' area between the garage and the house. The other addition is a front porch and entrance canopy on the house. A small addition is proposed on the back of the garage to accommodate a riding lawn mower.

The current design is 1950's modern, and the new roof line will correct the current flat roof design and alleviate leak issues that currently go with that design. The variances being requested are:

- Side yard set back (existing)
- Accessory structure over 30% of main building.

Once the garage is attached, this variance will not exist; however, combining the areas causes a building coverage variance. Also, some of the new areas are open porch with no walls.

Chairman Conklin pointed out that the building coverage figures do not appear to be correct, and he stated they needed clarification. After further review, it appeared they would be under the maximum building coverage, as this included the credit for the front porch. Chairman Conklin commented that the additions are small, and the porch is nice in the front. He would be in favor of the application, assuming that the numbers are correct. They would need to rectify this, as he would not be able to vote this evening until these are corrected.

Mr. Blum questioned the variance for the accessory structure, and Mr. Andre again explained that once the garage is attached, this variance no longer exists.

Mr. Thompson agrees with Chairman Conklin's comments.

Mr. Duddy thinks they have done a good job and also agrees with Chairman Conklin's comments regarding the fact that they are penalized, due to the ranch style design.

Mr. Reilly will prepare a resolution to be presented next month, and the applicant will provide revised plans showing the corrected numbers in the meantime. The application will be carried to the October meeting with no further notice required.

There being no further business, motion was made and seconded to adjourn. Voice Vote: Ayes, unanimous. The meeting was adjourned at 10:05 p.m.

Respectfully submitted,

Patricia Murphy
Clerk